

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES--GENERAL

Case No.: CV 09-7099-GW(CTx)

Date: December 8, 2009

Title: ERIC STEINBERG v. CITY OF LOS ANGELES, et al.

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DOCKET ENTRY:

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PRESENT: Hon. CAROLYN TURCHIN, MAGISTRATE JUDGE

Deborah Malone
Deputy Clerk

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:
None present

ATTORNEYS PRESENT FOR DEFENDANTS:
None present

PROCEEDINGS: (DENYING PARTIES' REQUEST TO SIGN STIPULATED
PROTECTIVE ORDER WITHOUT PREJUDICE)

The parties' request for the court to sign a stipulated protective order has been referred to the magistrate judge and is **DENIED WITHOUT PREJUDICE** for the reasons set forth below. The parties are advised to take the following into consideration before submitting a stipulated proposed protective order to the court:

1. Confidential material should be narrowly and specifically defined and supported by good cause for purposes of a protective order sought from the court. See Fed. R. Civ. P. 26(c); Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3d 1122, 1130 (9th Cir. 2003) ("[a] party asserting good cause bears the burden, for each particular document it seeks to protect, of showing that specific prejudice or harm will result if no protective order is granted") (citations omitted) (emphasis added); see also Seattle Times v. Rhinehart, 467 U.S. 20, 37 (1984) (protective order does not offend the first amendment where it is "entered on a showing of good cause as required by Rule 26(c), is limited to the context of pretrial civil discovery, and does not restrict the dissemination of the information if gained from other sources") (emphasis added).

So that it is clear to the court and any party or nonparty seeking to challenge the confidential designation of any documents covered by a protective order, the parties should identify the specific documents, categories of documents, or portions of documents to be deemed confidential in a meaningful fashion and indicate what prejudice or harm will result if no protection is granted for those particular documents or information. The stipulated protective order submitted to the court is not sufficient. (See, e.g., Stipulated Protective Order ("Stip."), ¶ 1.) Furthermore, a proposed protective order that gives the parties latitude to determine, after the fact, what types of materials should fall within the parameters of

protected material is not sufficiently specific. In the event the parties wish to seek protection for additional categories of materials in the future, they may request to amend the protective order.

2. A proposed protective order should make it clear that designation of materials as confidential does not entitle the parties to have those materials filed under seal, including for purposes of in camera review. (See, e.g., Stip. ¶¶ 5, 10, 11). In seeking to file confidential information under seal, a party should seek to file only the confidential portions of such documents under seal. In any such application, the parties must make the appropriate showing. See Kamakana v. City & County of Honolulu, 447 F.3d 1172, 1180-81 (9th Cir. 2006). Any application to file documents under seal in proceedings before the district judge should be made to the district judge.
3. A protective order sought from the magistrate judge applies only to information exchanged in discovery and other proceedings before the magistrate judge, and any proposed order submitted for the magistrate judge's signature should so state. The proposed order could be read to cover, for example, pre-trial and post-judgment matters. If the parties wish to have a broader protective order that covers matters beyond discovery, which it appears they may have been seeking to do, (see, e.g., Stip. ¶¶ 5, 8, 10, 11), they may submit a request for a proposed stipulated protective order to the district judge. The magistrate judge suggests that if the parties wish to submit a broader order to the district judge, they **clearly state in the caption that the request is not limited to discovery and is for consideration by the district judge** so the request will not be routed to the magistrate judge.

In general, once a case proceeds to trial, all information designated as confidential and/or kept and maintained pursuant to the terms of a protective order becomes public and will be presumptively available to all members of the public, including the press, unless an appropriate showing is made to the district judge in advance of the trial to proceed otherwise.

4. Any discovery motion concerning, for example, the proper designation of confidential material, a request for exemption from the stipulated order, or a request to file documents under seal in connection with a discovery matter should be filed in compliance with the procedures in Local Rule 37. The party seeking to maintain the confidentiality of the materials at issue has the burden of proof, and a proposed order may not shift that burden. See Foltz, 331 F.3d at 1130.
5. The stipulation contains typographical errors which render it ambiguous. (See Stip. ¶ 4.)
6. The court will not issue an order that purports to restrict or

limit the rights of the parties in another action to conduct discovery or the subpoena power of another court, as this proposed order could be read to do. (See Stip. ¶ 9.)

The parties should consider whether some or all of the materials at issue can be exchanged in redacted form (e.g., by deleting confidential information) or **whether they can enter into a confidentiality agreement among themselves, obviating the need for a protective order from the court.**

IT IS SO ORDERED.

cc: Judge Otero

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